

IN SENATE OF THE UNITED STATES.

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MAY 12, 1836.

Read, ordered to be printed, and that 2,000 additional copies be sent to the Senate.

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Mr. WALKER made the following

REPORT:

*The select committee to whom was referred the "bill to reduce and graduate the price of the public lands, in favor of actual settlers only; to provide a standing pre-emption law to authorize the sale and entry of all the public lands in forty-acre lots; and to equalize the grants of certain portions of the public domain among the several States in which the public lands are situate," on leave given, reported, in part, as follows:*

Reserving until the information called for from the Treasury Department is received, the questions presented by the first four sections of this bill, the committee will confine their report, at this time, to the last two sections of the bill. In the opinion of the committee, the subject involved in the last two sections, above alluded to, should not be involved in the fate which may await the other portions of the bill. By the treaty concluded with the Chickasaw Indians on the 20th of October, 1832, all the lands ceded by this treaty to the United States are either covered by reservations for the benefit of certain individuals, as specified in the treaties, or required to be sold for the sole benefit of the Chickasaw nation, by which the cession was made. These lands are situated in the States of Alabama and Mississippi, and are estimated by the Secretary of the Treasury at six million four hundred and twenty-two thousand four hundred acres. As, however, the President of the United States has directed a change of the line marked as the southern boundary of this Territory, so as to require said line, conformably to the treaty, to be run many miles north of the present designated boundary, the estimate of the number of acres presented by the Secretary of the Treasury will be very greatly reduced. The claim also urged by the State of Tennessee, to a large and valuable portion of this territory, may possibly still further diminish its dimensions. As the treaty now stands, and is carried into effect by the Executive Department, the sixteenth section in every township, for the use of schools therein, and the five per cent. fund, heretofore universally reserved to the new States, under various laws and compacts, are lost to the States of Alabama and Mississippi, so far as regards the lands ceded by this treaty. The question now presented is, Should Congress furnish to these States an equivalent for the loss of this fund

and school lands? The committee will first examine the question in relation to the sixteenth sections.

In the ordinance of Congress of the 20th May, 1785, the system of disposing of the lands of the United States is established. By this ordinance, it is made a fundamental provision that "there shall be reserved the lot No. 16 of *every* township, for the maintenance of public schools within the said township." Having in view this wise and salutary provision, it is declared, in the ordinance of Congress of the 13th July, 1787, "for the government of the Territory of the United States Northwest of the river Ohio," that "schools and the means of education shall *forever* be encouraged." The ordinance of the 20th May, 1785, establishes the reservation of the 16th section in every township for the use of schools, and this provision, or some equivalent for it, is perpetuated in the ordinance of the 13th July, 1787. Congress, in their directions, under date of the 23d of July, 1787, to the Treasury Board, for the sale of the Western territory, declare "the lot No. 16 in *each* township or fractional part of a township to be given *perpetually* for the purposes contained in the said ordinance." As regards the reservation of the sixteenth section, or an equivalent, for the use of schools, the people in each township, in the States of Alabama and Mississippi, have been placed on the same footing as the people of the Northwestern Territory. The territory embracing the States of Alabama and Mississippi, north of latitude 31, was ceded by Georgia to the United States, by articles of agreement and cession, dated April 24th, 1802. By these articles, the same privileges are conceded to the people of this Territory as those heretofore conferred on the people of the Northwestern Territory, and it is expressly declared that the ordinance of the 13th July, 1787, "shall, *in all its parts*, extend to the territory contained in the present act of cession, that article only excepted which forbids slavery." The fundamental provision in favor of "schools and the means of education," contained in the ordinance of the 13th July, 1787, was therefore extended to the entire territory now in question, then ceded by Georgia to the United States. Here, then, upon the solemn obligations of the very compact by which the United States obtained this territory, the committee might safely repose the case, for the provisions of this compact expressly extended throughout the whole ceded territory, embracing in terms the country thus acquired, "to which the Indian title has been *or may hereafter be extinguished*."

But the right of the people of this Territory is still further confirmed by the act of Congress of the 3d of March, 1803. This act, expressly embracing this entire territory, declares that section number sixteen "shall be reserved in *each* township for the support of schools within the same." Under the various titles confirmed by this act of the 3d of March, 1803, it often happened that the sixteenth section was covered by adverse and paramount titles, and it was specifically provided by the act of Congress of the 21st April, 1806, that, in all such cases, "the Secretary of the Treasury shall locate another section in lieu thereof, for the use of schools, which location shall be made in the same township, if there be any other vacant section therein, and otherwise, in an adjoining township." Here the principle of an equivalent, whenever the people of any township might

lose the sixteenth section, is established, and extended throughout the territory in question. Indeed, the principle of an equivalent is here extended to the case even of a "British grant" covering a sixteenth section, although that British grant may have originated prior even to the ordinance of 1785. That this act of the 21st of April, 1806, in its spirit and principle embraces the present case, your committee entertain no doubt.

By the act of Congress of the 1st of March, 1817, the people of the Territory now including the State of Mississippi, were authorized to form a State Government. By this act, the principles of the ordinance of the 13th of July, 1787, and of the compact with Georgia, are expressly applied to the people thus emerging from territorial pupilage, and assuming the attitude of a sovereign State. By this ordinance and compact, we have heretofore shown that the sixteenth section, or its equivalent, was reserved to the people of each township, and therefore, by this reference to, and adoption of, that ordinance and compact, by the act of the 1st of March, 1817, the sixteenth section or its equivalent is clearly reserved to the people of each township, in the State of Mississippi; for the rights of the people in this respect are necessarily rendered co-extensive with the limits of the State. But, independent of this reservation of the sixteenth section by the act of the 1st of March, 1817, this section was reserved by pre-existing laws and compacts, unrepealed by the act in question. Indeed, in the constitution of the State of Mississippi, (subsequently adopted by Congress,) all rights created under the territorial Government are expressly preserved and continued, unaffected by the assumption of State sovereignty. In further demonstration of this position, the act of the 6th of March, 1817, passed in relation to the Mississippi Territory, almost cotemporaneously with the act above quoted, expressly continues to reserve the sixteenth section in every township in future sales of the lands of the United States. Again, by the act of the 6th of May, 1822, "providing for the disposal of the public lands in the State of Mississippi, section numbered sixteen in each township," it is expressly declared "shall be reserved for the use of schools within the same." Similar acts of Congress, in regard to Alabama, might be cited, but, as a matter of superabundant caution, it is expressly declared, in the act of Congress of the 2d of March, 1819, authorizing the people of the Alabama Territory to form a State Government, "that the section numbered sixteen in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships, for the use of schools." We will cite but one other act of Congress in relation to the State of Mississippi upon this subject. It is the act of the 28th of January, 1833, and relates, by reference to township and range, to the sixteenth section in a part of the territory within the limits of the State of Mississippi, acquired long after the assumption of State government, by a treaty concluded with the Choctaw Indians. In that treaty, no allusion is made to the sixteenth section, yet the right of the people of each township embraced in the ceded territory to this section has been distinctly recognised by Congress as created by pre-existing laws. Certain individuals had a settlement upon, and claim to, the sixteenth section, in the township and range last referred to. This claim conflicted with the right of the people of this township to this section for

the use of schools. By the act of Congress of the 28th of January, 1833, these individuals were permitted to retain their claim to this sixteenth section, but section eleven of the same township and range was provided as a substitute for the use of schools in the township, in lieu of the sixteenth section, taken by the above-mentioned claim. So sacred, however, was the light in which Congress viewed the right of the people of the township to the sixteenth section, that the exchange was only authorized to be made in case "that the Secretary of the Treasury shall first be satisfied that the majority of the inhabitants of said township desire said exchange." Indeed, throughout Alabama and Mississippi, as well during their territorial pupilage as since their admission into the Union as States, the right of the people of each township to the sixteenth section, or an equivalent, for the use of schools, has been universally recognised by every department of the Government. This right is ingrafted in an unbroken series of laws and compacts, from the ordinances of 1785 and 1787, down to the present period, either by the adoption of those ordinances, or by express reservation. It is impressed upon all the public surveys of the public domain, in every State and Territory of the Union. It is incorporated into all the operations of the old Treasury Board, and of the present Treasury Department, from its organization to the present period. It is a sacred, fundamental, and inviolable reservation of the sixteenth section, or its equivalent, in behalf of the people of each township, in every State and Territory, formed out of the public domain, and especially was this right rendered co-extensive with the limits of Alabama and Mississippi, by the acts of Congress of 1803 and 1806, before cited.

The country ceded by the Chickasaws is within the limits of Alabama and Mississippi; and the right of the people of each township to the 16th section, or its equivalent, is just as sacred and inviolable in the country ceded by the Chickasaws, as in every other portion of these States. If this specific section cannot be had without violating the treaty with the Chickasaws, then the right of the people to an equivalent section is full and complete. Throughout all the new States and Territories composed of the public domain, the principle of an equivalent has been universally recognised, whenever the 16th section was taken by an adversary claim. Your committee have heretofore shown the express adoption of this principle as regards Alabama and Mississippi, and they will now cite a few from the numerous instances in which it has been applied in the other new States of the Union. By the act of Congress of the 3d of March, 1823, it is enacted "that, *in all cases* in which section number sixteen, *in any township within the State of Mississippi*, has been sold, or otherwise disposed of, it shall be the duty of the register and receiver of the respective land office in whose district such land may be, so soon after the passage of this act as may be, to select the like quantity of other lands, equivalent thereto, from any of the unappropriated lands of the United States in that State." Here the principle of an equivalent of the sixteenth section is adopted co-extensively with the limits of the State of Missouri. By the act of Congress of the 20th of May, 1826, entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for," an equivalent for the loss of the 16th section is directed in all cases "in those States in



which section No. 16, or other lands equivalent thereto, is by law directed to be reserved for the support of schools in each township." As, by the acts of Congress of 1803 and 1806, and various other enactments of Congress before cited, the right of the people of each township to the 16th section, or its equivalent, is expressly recognised and established throughout the limits of Alabama and Mississippi, this act of May, 1826, would provide a remedy in the present case, were not a probable obstruction to the practical operations of this act presented by the provisions of its 2d section. That section is in these words: "That the aforesaid tracts of land shall be selected by the Secretary of the Treasury, out of any unappropriated public land within the land district where the township for which any tract is selected may be situated; and, when so selected, shall be held by the same tenure, and upon the same terms, for the support of schools in such township, as section No. 16 is, or may be held, in the State where such township shall be situated." The principles of this law embrace the case in question, and might be practically extended to it, by enlarging the land districts in Alabama or Mississippi, without violating the rights of the United States, or of the Chickasaw Indians.

By the act of Congress of the 29th of May, 1830, the Territory of Arkansas was authorized to select other equivalent lands, wherever the 16th sections were covered by other valid claims. The committee will cite but one remaining example; but it is a case so closely parallel to the present, as to merit particular observation. By the act of Congress of the 28th of April, 1800, the right of the United States to the western Connecticut reserve was ceded to the State of Connecticut. This western reserve is known to constitute now a very large and valuable portion of the flourishing State of Ohio. There being no sixteenth section appropriated for the use of schools in all the townships of the western reserve, the Legislature of Ohio, in 1828, applied to Congress for "a grant of so much lands from the United States, for the use of schools, in the Connecticut western reserve, as, together with the lands heretofore granted for that purpose, shall be equal to one-thirty-sixth part of the land contained in said reserve." By the Indian treaty at Fort Industry, of the 4th of July, 1805, the Indian title to all the residue of the reserve, amounting to upwards of a million and a half of acres, was extinguished by the United States, for all which no school sections were reserved. The application above mentioned, of the State of Ohio, was referred to the Committee on Public Lands of the House of Representatives of Congress, from which committee Mr. Vinton made a report in favor of the application, which report concluded as follows: "The committee are of opinion that the spirit of the compact and the reason of the case require that this tract of country should be placed upon an equal footing with the rest of the State of Ohio, and indeed of all the Western States, in the provision that has been made for the support of schools." But "all the Western States," as this committee supposed, will not be placed on "an equal footing" in this respect, if the present application on behalf of portions of the States of Alabama and Mississippi is now refused. In pursuance of this memorial of Ohio, an act of Congress was passed on the 19th of June, 1834, entitled "An act to grant to the State of Ohio certain lands for the support of schools, in the Connecticut

western reserve." By this act a quantity of land in other sections of Ohio, "equal to one-thirty-sixth part of said western reserve," was appropriated for the use of schools therein. Thus, whilst Congress derived nothing from the sale of the lands in the western reserve, this section of the State was placed on the same footing as the other portions of Ohio, in regard to a section for each township for the use of shools therein.

The various committees of both Houses of Congress which may at any time in their reports have referred to this subject, have invariably sustained the right of the people of every township in the States created out of the public domain, to the 16th section, or its equivalent, for the use of schools. This committee will present extracts from but two of these reports, one from a committee of the House, and the other from a committee of the Senate. In the first of these reports, made by Mr. Hunt, from a select committee, it is stated, "Congress has granted one entire section of land, equal to 640 acres, in *each* township of six miles square, in *all* the States, upon the national territory, amounting in the whole to upwards of 5,000,000 acres, to be enjoyed forever by the inhabitants of such township, for the use of schools." Here the broad and comprehensive principle which embraces the present case is distinctly recognised. The other report to which your committee would refer, is the celebrated report of Mr. Clay, from the Committee on Manufactures of the Senate, in favor of the distribution among the several States of the proceeds of the sales of the public lands. In this report the committee say, "By voluntary compacts between the new States, respectively, and the General Government, five per cent. of the nett proceeds of *all* the sales of the public lands, included within *their limits*, are appropriated to internal improvements, leading to or within those States; that a section of land in each township, or one-thirty-sixth part of the *whole of the public lands embraced within their respective boundaries*, has been reserved for purposes of education." Here the principle is again distinctly admitted, that the rights of the new States to this five per cent. and school sections is co-extensive with the "boundaries" of each of the new States, where the public lands are situated.

The various branches of the Executive department, in all their communications on this subject, have uniformly adopted the same principle, both before and since the Chickasaw treaty. We will quote from but one of these reports, that of the Secretary of the Treasury, under date of the 28th of April last, in answer to a call from the House of Representatives for information in regard to the public lands. In this report the Secretary says, in relation to all the new States, specifying Mississippi and Alabama among the number, "one-thirty-sixth part of the public lands granted for the support of common schools, is calculated on the *superficial contents of each State*;" presuming, as a matter of course, that equivalent sections would be given for the loss of the 16th sections under the Chickasaw treaty.

But, suppose that all the departments of the Government have been mistaken on this subject, and that Congress might, in the present case, withhold these sixteenth sections, or an equivalent, without the infraction of any positive law or compact, would it be proper to do so? Would it

be proper to deprive portions of the States of Alabama and Mississippi of privileges coeval with our land system, and extended to all the other new States? Would it be a wise or salutary course to strike out this grant of the sixteenth sections in the present case, and thus deprive the people of these townships of that sacred grant, for the noble purpose of planting schools in the wilderness, where virtue and knowledge might be instilled into the minds of that rising generation which we hope is destined to perpetuate our republican institutions? Shall these village and township schools be prostrated, these glorious lights be extinguished, in portions only of Alabama and Mississippi, when every township in all the other new States and Territories erected out of the public domain, are enjoying the advantages of the ordinances of 1785 and 1787? Your committee cannot believe that Congress will now abandon its settled policy upon this subject, and create a most odious distinction between the case of Alabama and Mississippi, and that of all the other new States where the public land is situated.

Having demonstrated, as your committee conceive, the propriety of granting to the States of Alabama and Mississippi an equivalent for the loss of the 16th section, under the Chickasaw treaty, we will now proceed to investigate the question in regard to the 5 per cent. fund. And here we might refer to most of the acts of Congress heretofore cited, in relation to the question of the 16th sections, as applicable to the inquiry in regard to the 5 per cent. fund. As, however, the organic acts by which the States of Alabama and Mississippi were authorized to form State governments both provide particularly for the reservation to each of these States of this five per cent. fund, it cannot be necessary to repeat the citation of the other numerous acts on this subject. The act of the 1st of March, 1817, entitled "An act to enable the people of the western part of the Mississippi Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," provides, in its fifth section, as follows: "That five per cent of the nett proceeds of the *lands lying within the said Territory*, and which *may be sold by Congress*, from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making roads and canals, of which three-fifths shall be applied to those objects within the said State, under the direction of the Legislature thereof, and two-fifths to the making of a road or roads leading to the said State, under the direction of Congress." The act of the 2d of March, 1819, entitled "An act to enable the people of the Alabama Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," provides as follows: "That five per cent. of the nett proceeds of the *lands lying within the said Territory*, and which *shall be sold by Congress*, from and after the first day of September, in the year one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths shall be applied to those objects within the said State, and two-fifths to the making of a road or roads leading to the said State, under the direction of Congress." The two provisions are nearly substantially the same. These lands, ceded by the Chickasaws in October, 1832, were,

in the language of these organic laws, "*lands lying within the said Territory*," both as regards Alabama and Mississippi; and they are also lands, in the language of said laws, to be "*sold by Congress*;" the sales of them by Congress are now progressing, but these States cannot receive this fund, because, under the treaty with the Chickasaws, the nett proceeds of all the sales are to be paid over to them; but this does not release Congress from its solemn obligation to pay to each of these States a sum equivalent to this fund. The same reservation has been made as regards all the new States erected out of the public domain; and these funds are to be expended in making roads in and leading to these States; the value of the public lands therein, are thereby greatly enhanced, and it is consequently the interest of the nation, as a mere question of dollars and cents, to provide this fund for all these States, and to permit no portion of this fund to be subtracted or diminished. In conformity with these principles, the committee have reported a bill, which they unanimously recommend to the early consideration of the Senate.